

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

KATHY L. LEWIS,)
)
Plaintiff,)
)
v.)
)
NANCY A. BERRYHILL,)
Acting Commissioner of)
Social Security Administration,)
)
Defendant.)

Case No. 15-CV-84-JHP-SPS

**ORDER AFFIRMING AND ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES
MAGISTRATE JUDGE**

On March 21, 2017, the United States Magistrate Judge entered a Report and Recommendation in regard to Plaintiff's request for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). The Magistrate Judge recommended that Plaintiff's Application (Doc. No. 21) be deemed moot and that Plaintiff's Supplemental Application (Doc. No. 24) be granted. No party has filed any objection to the Magistrate Judge's Report and Recommendation within the time prescribed by law. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(a).

This Court finds that the Report and Recommendation of the Magistrate Judge is supported by the record. Therefore, upon full consideration of the entire record and the issues presented herein, the Court finds and orders that the Report and Recommendation entered by the United States Magistrate Judge on March 21, 2017, be **AFFIRMED** and **ADOPTED** by this Court as its Findings and Order. It is **ORDERED** that Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 (Doc. No. 21) is deemed **MOOT** and Plaintiff's Supplemental Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 (Doc. No. 24) is **GRANTED**.

Accordingly, the Government is ordered to pay Plaintiff's attorney's fees in the amount of \$4,943.40 and costs in the amount of \$400.00.

It is further **ORDERED** that the award in this case is to be made payable to Plaintiff, not Plaintiff's counsel, or jointly to Plaintiff and Plaintiff's counsel, as 28 U.S.C. § 2412(a)(1) and (d)(1)(A) provide for an award of costs and attorney's fees to a "prevailing party." Further, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. §406(b)(1), she shall refund the smaller award to the plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 11th day of April, 2017.



James H. Payne
United States District Judge
Eastern District of Oklahoma